

WEBINAR WEDNESDAYS



Wednesday, June 2, 2021

Building the Right Supports to Empower Elder Victims of Crime

Presented by:

Amy Bocks

Advocate Program Manager, Arizona Attorney General's Office
&

Sterling Struckmeyer

Assistant Attorney General, Arizona Attorney General's Office

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3838 N. Central Ave., Suite 850

Phoenix, Arizona 85012

ELIZABETH BURTON ORTIZ

EXECUTIVE DIRECTOR

BUILDING
THE RIGHT SUPPORTS TO
EMPOWER
VICTIMS OF CRIME

Assistant
Attorney General
Sterling
Struckmeyer

Amy Bocks,
Advocate
Program
Manager

Arizona Attorney
General's Office



VICTIMS' RIGHTS IN ARIZONA

- November 1990 – Proposition 104 added a Victims' Bill of Rights to the Arizona Constitution
- 1992 AZ enacted Victims' Rights statutes
- 1996 AZ enacted Victims' Rights for juvenile offenders

Arizona continues to lead the nation in progressive rights for crime victims.

RECENT CASE LAW

- *E.H. v. Slayton*, 249 Ariz. 248 (August 2020) (*Slayton II*)-
- Restitution caps in plea agreements require victim consent.
- AND victim's counsel has a presumptive right to sit in the well of the courtroom during a hearing involving a victim's constitutional or statutory right, subject to the physical limitations of a courtroom or other trial exigencies.
- NOTE: Although not victim rights related, *Slayton* also holds that due process does not require a court to inform a defendant of a specific amount of restitution for which defendant may be liable or to cap the amount that may be ordered in plea agreement; overruling *State v. Lukens*, *State v. Phillips*, and *State v. Crowder*.

RECENT CASE LAW

- *State v. Patel*, 2021 WL 1783108 (May 4, 2021)-
- Applies to restitution caps set by statute.
- Legislature does not have authority to limit VBR's guarantee of victim's right to receive prompt restitution for the **full amount** of economic loss or injury caused by a defendant's criminal conduct.

RECENT CASE LAW

- *E.H. v. Slayton (Slayton III)* 2021 WL 1540512 (April 20, 2021) COA Div. 1
- COA noted that there is no AZ rule or statute that imposes a deadline for claiming restitution, but the court did note that a trial court can place a reasonable deadline on a restitution claim
- Cannot arbitrarily deny claim as untimely

RECENT CASE LAW

Crime Victims R.S. and S.E. v. Thompson, 2021 WL 1711586 (April 29, 2021)

- When a defendant's due process right to present a complete defense conflicts with a victim's state constitutional or statutory rights governing privileged mental health records, the victim may be compelled to produce such documents for in-camera review if the defendant shows a ***reasonable possibility*** that the information sought includes evidence that would be material to the defense or necessary to cross-examine a witness.



WHAT TO EXPECT FROM THE CRIMINAL JUSTICE SYSTEM

INVESTIGATIONS

- Can be lengthy
- Role of an advocate
- Exercising rights
- Evidence / documents
- Interviews

PROSECUTION

- Can be lengthy
- Role of an advocate
- Attending court
 - Deposition?
- Continuances
- Exercising rights
 - Interview?
- Meeting with attorneys
- Realities of restitution
- Sentence expectations

POST-CONVICTION

- Can be lengthy
- Can be unexpected and/or confusing
- Role of an advocate
- Attending court
- Exercising rights
- Enforcing restitution
- Prison vs. Jail
- Probation
- Appeals

Jurisdiction & Victimization

- White collar crime
- Organized crime
- Public corruption
- Crimes committed in more than one county
- Environmental laws
- Civil rights laws
- Consumer fraud and protection cases
- Conflict cases
- Appellate and death penalty cases
- And now-any violation of Title 13 if the victim is a Vulnerable Adult

<https://www.azag.gov/criminal/victim-services>

FINANCIAL EXPLOITATION OF THE ELDERLY

- 15.7% of people worldwide aged 60 years or older experienced some form of abuse (A)
- 1 in 10 Americans over 60 have experienced some form of elder abuse (B)
 - Estimated 1 in 14 are reported to authorities (C)
- Financial exploitation is self-reported more than other abuse and results in an estimated \$2.9-36.5 BILLION annually (D)
- Arizona in State Fiscal Year 2018 (E), of allegations investigated:
 - 38% abuse
 - 33% exploitation
 - 29% neglect
 - Perpetrator: Family – 42%; Caregivers – 29%; Friends or neighbors – 10%; 19% other

(A) World Health Organization, 2018

(B) National Council on Aging, 2020

(C) National Research Council, 2013

(D) The MetLife Study of Elder Financial Abuse, 2011

(E) Arizona Adult Protective Services, 2018 Annual Report

WHO IS A VICTIM?

- A **victim** is a person **against whom the criminal offense* has been committed**, including a minor, or if the person is killed or incapacitated, the **person's spouse, parent, child or grandparent or sibling, any other person related** to the person by consanguinity or affinity to the second degree or any **other lawful representative**, except if the person is in custody or is the accused.
- * A criminal offense is conduct that gives a peace officer of prosecutor probable cause to believe that a felony, misdemeanor, a petty offense or a violation of a criminal ordinance has occurred.

IMPORTANT VICTIMS' RIGHTS STATUTES

A.R.S. 13-4403

Inability to exercise rights;
lawful representatives; notice;
definition

■A. If a victim is physically or emotionally unable to exercise any right but is able to designate a lawful representative who is not a bona fide witness...

■B. If a victim is incompetent, deceased or otherwise incapable of designating a representative to act in the victim's place,

the court may appoint a lawful representative who is not a witness...

■C. If the victim is a minor or vulnerable adult the victim's parent, child or other immediate family member may exercise all of the victim's rights on behalf of the victim...

With exception!

WHEN IS IT RIGHT TO *APPOINT* A LAWFUL REPRESENTATIVE?

When the victim is deemed vulnerable...

- By an Adult Protective Services investigation
- When the prosecutor charges the defendant with a crime against a vulnerable adult
- If there are concerns of competency

...And there is no other appropriate person to assume the role

IMPORTANT VICTIMS' RIGHTS STATUTES (CONT.)

A.R.S. 13-4409

Notice of criminal proceedings

■ C. On receiving the notice from the court, the prosecutor's office shall, on request, give notice to the victim in a timely manner of scheduled proceedings and any changes in that schedule, including any continuances.

A.R.S. 13-4420

Criminal proceedings; right to be present

■ The victim has the right to be present throughout all criminal proceedings in which the defendant has the right to be present.

IMPORTANT VICTIMS' RIGHTS STATUTES (CONT.)

Victims Have the Right to be Heard

- **A.R.S. 13-4422** Post Arrest Custody Decisions
- **A.R.S. 13-4419** Victim Conference with Prosecuting Attorney
- **A.R.S. 13-4423** Plea Negotiation Proceedings
- **A.R.S. 13-4426** Sentencing (A.R.S. 13-4426.01 - without cross-examination!)
- **A.R.S. 13-4414** Right to be heard (Board of Executive Clemency)
- **A.R.S. 13-4415** Right to be heard at a hearing that is set to consider any modification to be made to any term of probation

RESTITUTION CLAIMS

- Restitution is reimbursement by the defendant for financial losses that were directly caused by the crime.
- Victim Compensation is a fund that provides financial assistance to crime victims for out-of-pocket expenses experienced as a result of crime.
- The role of advocates in restitution

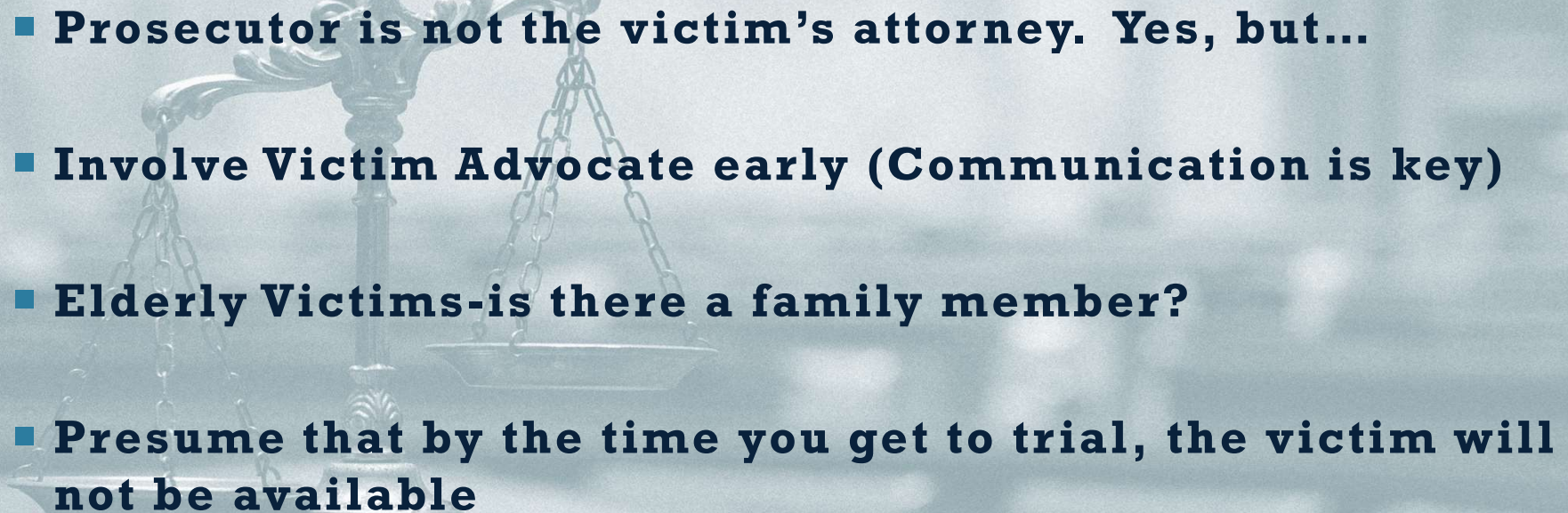
TIPS FOR ADVOCATES **HELPING WITH** **RESTITUTION**

- Keeping records and paperwork
- Don't give away only copy
- Don't make a claim for "damages" or "pain and suffering"
- Talk to the victim early about his/her/their restitution needs
- Don't count on it all at once or to pay bills/expenses

FOR THE LOVE OF MONEY: A CASE STUDY



PROSECUTOR BEST PRACTICES

- 
- **Prosecutor is not the victim's attorney. Yes, but...**
 - **Involve Victim Advocate early (Communication is key)**
 - **Elderly Victims-is there a family member?**
 - **Presume that by the time you get to trial, the victim will not be available**

ROLE OF AN ADVOCATE

- 
- **Family support**
 - **Right info to drive their own advocacy**
 - **Appearing in court and being heard**
 - **Allies**
 - **Victim Impact Statements**
 - **Empower**
 - **Personal advocacy**

VICTIM IMPACT STATEMENT

- Statement to the court (and/or probation department) presenting evidence, information and opinions concerning the offense, defendant, the sentence or need for restitution
- Court is interested in the physical, psychological, and economic impact the offense had on the victim
- May be made orally, submitted in writing, or submitted through audiotape, videotape, or other digital media that is available to the court
- A Victim Impact Statement is not subject to cross examination.
- A Victim Impact Statement can change a judge's view on sentencing

VICTIMOLOGY

Potential Victim Feelings

- **Embarrassed**
 - In front of friends and family
 - To tell medical professionals of increased stress or anxiety
- **Scared**
 - Of the perpetrator / retaliation
 - Of losing their independence
 - Of the CJS
- **Guilty**
 - Responsibility
- **Violated**
 - Trust
 - Personally / financially

WHAT MAKES ELDERS LESS LIKELY TO PARTICIPATE IN THE CJS?

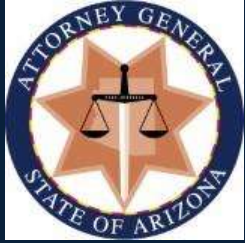
- **Apprehensive about participating in criminal justice system**
- **Ability**
- **Generational qualities**
- **Grooming**
- **Boundaries**

COMMON SCAMS TARGETING THE ELDERLY

- Medicare/health insurance scams
- Counterfeit prescription drugs
- Funeral & cemetery scams
- Fraudulent anti-aging products
- Telemarketing/phone scams
- Internet fraud
- Romance scams
- Investment schemes
- Homeowner/reverse mortgage scams
- Sweepstakes & lottery scams
- The grandparent scam

- The National Council on Aging





WHEN YOU NEED HELP

States

Attorney General's Office

Adult Protective Services

Law enforcement

State Area Agency on Aging

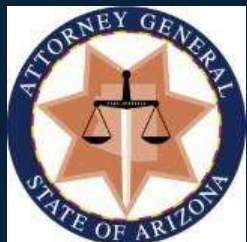
AARP chapters

Nationally

National Center on Elder Abuse

Victim Connect Resource Center

National Council on Aging



CONTACT

Amy Bocks
Advocate Program Manager
(520) 628-6977
Amy.Bocks@azag.gov

Sterling Struckmeyer
Assistant Attorney General
(520) 628-6362
Sterling.Struckmeyer@azag.gov

www.AZAG.gov